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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,928	04/13/2004	Rock A. Gagnebin	ROCKG-001XX	4439
207 7590 05/05/2009 WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109			EXAMINER BRADEN, SHAWN M	
			ART UNIT 3781	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/822,928	<b>Applicant(s)</b> GAGNEBIN, ROCK A.	
	<b>Examiner</b> SHAWN M. BRADEN	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/09/09 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Dependent claim 3 states "vacuum producing device is provided on said container bottom" But claim 20 from which claim 3 depends states "a closed bottom" this ambiguity makes the claim indefinite.

4. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Possibly a typo but claim 4, states "a plurality of openings are elongated" the openings in the drawings and spec are typical openings of a container and its not understood how they are elongated. Applicant appears to be claiming

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elongated apertures. Also there is no antecedence for said plurality of openings in claim 4.

5. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has already defined a container wall, a container bottom, a liner wall, a liner bottom in claim 20. It is standard practice to refer to structure that has been previously defined in the past tense such as said liner or said container wall. Currently written claim 8 appears to define secondary walls and liners that are not disclosed in the specification.

6. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 20 states "an exhaust aperture through on of said contained wall and bottom" But claim 20 line 3 states "a closed bottom" this ambiguity makes the claim indefinite.

7. Claims 8,9 recite the limitation "said annulus". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 20,21,2-6,8,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks (USPN 6,000,571) in view of Gray (USPN 7,273,155).

Brooks discloses the invention substantially as claimed as follows:

With respect to claim 20, a container having a tubular wall (14) and an upper opening thereto through a rim (15) of said wall and a closed bottom (13); a liner (12) having a tubular wall (17) and having a top opening at a rim (22) of said wall and a closed bottom (16) and disposed for placement in said container (11) through the opening of the container; said liner adapted for receiving a trash bag (31) through the opening of said liner; said liner dimensioned for insertion within said container with said liner opening in a fixed relation to said container opening and to thereby form an annular space (19) between said liner wall and said container wall; said liner wall having a plurality of apertures (23,24).

10. With respect to claim 21, a liner (12) for a vacuum operated a tubular wall (17) and an upper opening thereto through a rim (22) of said wall and a closed bottom (16), an aperture through one of said container wall and bottom (24), and means for withdrawing air through the aperture (col 4 line 25-28 describes the air movement), said liner comprising: a tubular wall (12) and having a top opening at a rim (22) of said wall thereof and a closed bottom (16) and disposed for placement in said container through the opening of said container; said liner adapted for receiving a trash bag (31) through the opening of said liner; said liner dimensioned for insertion within said container with said liner opening in a fixed relation to said container opening and to thereby form an

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annular space (19) between said liner wall and said container wall from a location proximate to the opening; said liner wall having a plurality of apertures (23,24)

11. With respect to claim 8, Brooks shows a perforated container lid (30) for removably closing said liner and said container and wherein said container is defined by a container wall (14), a container bottom closing (13) one end of said container wall and a container flange (the upper edge 15 also meets flange as projections are shown in fig. 2, fig.3) extending around the opposite end of said container wall and said liner is defined by a liner wall (17), a liner bottom (16) closing one end of said liner wall, said liner bottom spaced from said container bottom to define said annulus and a liner flange (21) provided on the opposite end of said liner wall from said liner bottom, said liner flange engaging said container flange for removably receiving said container lid (30) and wherein said vacuum-producing device (fig 4) is mounted on said container bottom.

12. With respect to claim 9, Brooks shows a perforated container lid (30) for removably closing said liner and said container and wherein said container is defined by a container wall, a container bottom (13) closing one end of said container wall, a container flange (the upper edge 15 also meets flange as projections are shown in fig. 2, fig.3) extending around the opposite end of said container wall and said liner is defined by a liner wall (17) having a liner flange (21), said liner wall spaced from said container wall to define said annulus and said liner flange engaging said container flange for removably receiving said container lid and wherein said vacuum-producing device (30) is mounted on said container wall.

However Brooks does not disclose said liner wall having a plurality of apertures

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around and down its tubular wall from a location proximate said opening to a location proximate said closed bottom, said openings communicating from the interior of said liner to said annular space when said liner is inserted into said container, said at least one opening plurality of apertures comprises a plurality of elongated openings provided in spaced apart parallel relationship.

Martin teaches said liner wall having a plurality of elongated openings (15) <sup>(claims 2,4)</sup> provided in spaced apart parallel <sup>(claim 6)</sup> relationship around and down its tubular wall from a location proximate said opening to a location proximate said closed bottom, said openings communicating from the interior of said liner to said annular space when said liner is inserted into said container; in the same field of endeavor for the purpose of ventilation.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a plurality of elongated openings provided in spaced apart relationship as taught by Martin to the liner wall of Brooks in view of Gray in order to forcefully remove air pockets from the sidewall of a flexible bag liner in a trash receptacle.

However Brooks does not disclose an exhaust aperture through one of said contained wall and bottom; and means for withdrawing air from said annular space through the apertures through said exhaust aperture wherein air pressure is reduced in said annular space and the trash bag is forcefully deployed against and down said liner wall responsive to operation of said air withdrawing means..

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Gray teaches (fig. 10) an exhaust aperture (94) through one of said contained wall and bottom; and means for withdrawing air (a fan 95) from said annular space through the apertures through said exhaust aperture wherein air pressure is reduced in said annular space and the trash bag is forcefully deployed against and down said liner wall responsive to operation of said air withdrawing means (col 2 line 50-55) in the same field of endeavor for the purpose of removing space between the bag and the liner of a trash receptacle.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to add an air removal mean to the bottom <sup>(claim 5)</sup> or side <sup>(claim 3)</sup> of the container as taught in various embodiments of Gray to the container of Brooks in view of Martin in order to remove air pockets in the bag liner of a trash receptacle.

10.-19. Cancelled

***Response to Arguments***

13. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

14. Also please note the following passage as cited in KSR :

"the Court derived from the precedents the conclusion that when a patent "simply arranges old elements with each performing the same function it had been known to perform" and yields no more than one



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would expect from such an arrangement, the combination is obvious.” *KSR Int’l Co. v. Teleflex Inc.*, 82 USPQ2d 1395 (U.S. 2007) .

15.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHAWN M. BRADEN whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Friday 9-6:30 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony D Stashick/

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Supervisory Patent Examiner, Art  
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/S. M. B./  
Examiner, Art Unit 3781